

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
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PITTSBURG UNIFIED SCHOOL DISTRICT,)	
(PITTSBURG, CALIFORNIA))	File No. SLD 143740
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	CC Docket No. 96-45

**REQUEST FOR REVIEW OF THE DECISION AND WAIVER OF THE
DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR BY
PITTSBURG UNIFIED SCHOOL DISTRICT,
PITTSBURG, CALIFORNIA**

I. INTRODUCTION

The Pittsburg Unified School District, (the “District”) appeals the decision of the Universal Service Administrative Company (“USAC”) concerning the Schools and Libraries Universal Service Support Mechanism (also known as the E-rate program) to deny funding for the following Form 471 application numbers and funding requests:

696082 FRN 1912783

688941 FRN 1912109

USAC ruled there was a competitive bidding violation related to two clarifying addenda issued for the associated RFP. USAC ruled that the addenda were not ‘minor modifications’ and mandated that PUSD should have ‘re-started’ the 28 day clock upon issuance of the addenda. The District strongly believes that USAC has erred in their assessment of the addenda and in their implementation of the Commission’s competitive bidding rules and, accordingly files this appeal requesting the Commission review the facts of this case and remand the application(s) to USAC for further review and reversal of the decision.

II. BACKGROUND

Pittsburg Unified School District is located in a relatively rural part of Central California and serves a particularly disadvantaged group of students who are often the children of migrant farmers. The E-Rate program has been instrumental in allowing these children who without connectivity in a modern classroom, would have little opportunity for exposure to the valuable learning tools available in the 21st Century world we are living in. Pittsburg Unified School District filed its Funding Year 2009/2010 Form 470 (923030000705102) on 12/02/2008 with an Allowable Contract

Date (ACD) of 12/30/2008. The accompanying RFP was available on 11/30/2008 with a due date for proposals of 01/06/2009, which was 7 days longer than the ACD on the 470.

On 12/23/08, the District issued the first of two addenda to the RFP clarifying some terms and conditions and providing clarification on a few scope questions that had been received from two different vendors regarding the project. PUSD also provided some drawings to aid the participants in their response¹. None of the information provided in this addendum could be considered substantive as it was simply clarifying information and in fact, providing more information so as to allow the respondent vendors to be MORE accurate and competitive in their responses². This addendum included a short extension of time for the responses to be due, but this was done simply as a courtesy; it was not required by California law or the District's policy.

On 01/09/09, PUSD issued a further clarifying addendum in response to RFI (Request for Information) from the service providers that were actively participating in the RFP.

USAC initiated a Special Compliance review of the District's FY 2009/2010 applications and issued the following statement on 2/9/11 (*almost two years to the day after the applications had been submitted*).

In response to the Special Compliance Information Request you provided two Request for Proposal (RFP) Addendum. Upon review we find that the RFP Addendums were not available for service providers to review for 28 days (from release date to due date). In order to ensure a fair competitive bidding process, the Form 470 and RFP (if applicable) and any RFP Addendums must be posted for 28 days before vendor evaluation/selection can be performed. Based on this documentation the following FRN's 1912109 and 1912783 will be denied.

PUSD **IMMEDIATELY** disagreed with USAC's assessment for the following reasons:

¹ See attached PUSD RFP and addenda.pdf

² It is important to note that there were only TWO vendors that attended the pre-bid conference and were participatory in the RFP process. They were AMS.Net and Walker Communications.

According to guidance provided at USAC's Fall 2009 Training in Los Angeles, CA, the only time the 28 day clock would start over is when:

- 1) a new RFP is issued,
- 2) scope of services change,
- 3) the addendum constituted a "cardinal change", or
- 4) a new Form 470 was posted.

None of these elements were present in this process.

The documents that were identified as "Addendums" were truly by definition an RFI – Request for Information and should have been named as such. RFI is a process by which potential respondents can ask questions of the applicant to clarify information presented in the RFP. The RFI's (questions) were submitted to the contact as instructed on page 151 of the RFP. Responses to these questions were subsequently released to all respondents. In our opinion and in the absence of clear guidance to the contrary, the content of the RFI does not constitute a substantive change.

PUSD complied with the Commission's rules and USAC's posted guidance by conducting a fair and open competitive process. On the SLD website, the definition of a fair and open competitive process is: **"Fair" means that all bidders are treated the same and that no bidder has advance knowledge of the project information. "Open" means there are no secrets in the process – such as information shared with one bidder but not with others – and that all bidders know what is required of them.**

<http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>

PUSD does not see where any of the information that resulted from the standard process of "RFI" would constitute a violation of the Commission's competitive bidding rules

because the information was available to all bidders and in a uniform manner. Questions asked by one vendor were answered to ALL vendors and no single vendor had more or different information than another.

We have been unable to find support anywhere for USAC's statement that **ALL addenda** must be available for 28 days. The only written guidance on USAC's site is at the following URL <http://www.usac.org/sl/applicants/step03/>

However, nowhere does the guidance there state (or even suggest) that **all** addenda must be available for 28 days. PUSD does understand that there *may be* instances where because of the substance of additional information, it would be in the best interest of an applicant to 'start the clock over', but to unilaterally state that every time a question is asked and answered there must be another 28 days is completely unreasonable. If that were the case, how could an applicant ever 'finish' their competitive process? PUSD questions where USAC is in a position to unilaterally state that as a rule (or as policy) when the guidance does not indicate that nor does the associated CFR.

TITLE 47--TELECOMMUNICATION
CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION (CONTINUED)
PART 54_UNIVERSAL SERVICE--Table of Contents
Subpart F_Universal Service Support for Schools and Libraries
Sec. 54.504 Requests for services.

(4) After posting on the Administrator's website an eligible school's, library's, or consortium's FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. **That entity shall then wait at least four weeks from the date on which its *description of services* is posted on the Administrator's website before making commitments with the selected providers of services.** The confirmation from the Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s).

We are unable to understand where (or whether) a statutory violation has occurred since the associated CFR does not speak to the specifics of the denial reasoning indicated by USAC. It is also critical the Commission understand that the RFP process is regulated by California law (Education Code and Public Contract Code) and there is no requirement

that a school district start the process over when an addendum is issued, whether the addendum constitutes a ‘cardinal change’ or not. It is also important to consider that the competitive nature of the process was not compromised as there were multiple responses submitted and no single respondent received information that was not received by all participants.

If after careful consideration of the facts presented, the Commission decides that the addenda in question were substantive enough to constitute a cardinal change to the scope of the RFP and a statutory violation of the program’s competitive bidding rules, then PUSD respectfully requests a waiver of the associated rules in this limited instance as strict adherence to the rule will not serve the public interest. The schools in Pittsburgh Unified School District that are awaiting a decision on this matter are in desperate need of the upgrades this project will provide. Without them, the District will have difficulty in furthering the educational mission set forth by NCLB and Board of Education mandates.

DECISIONS BY THE COMMISSION ON APPEALS

As recently as June 9, 2011³, the Commission has ruled fairly and justly in other instances where USAC has denied funding for alleged competitive bidding violations because they (USAC) are not in a position to make ‘judgment calls’ regarding compliance with the E-Rate program rules. In the Commission’s “Allendale County” order (DA 11-723) released 4/21/11, the Commission took into account all of the petitioners’ circumstances and ruled accordingly again, in a fair and just manner.

DISCUSSION

³ Ramirez Order (DA 11-1039) 6/9/11

1. The District believes that under the circumstances described above, and pursuant to the applicable rulings by the FCC, there is reason for the Commission to reverse the funding denials issued by USAC or accordingly, waive the competitive bidding rules in this instance as the rule itself does not clearly indicate the manner in which ‘addenda’ should be viewed. Since the District has developed and is implementing a comprehensive and responsible plan to achieve their network goals and in turn, to further advance the educational opportunities for the students that are served, the District believes that denial of this request does not “further the purposes of the statutory goal mandated by Congress of preserving and advancing universal service among schools and libraries.”

VI. CONCLUSION

For the reasons discussed herein, the District respectfully requests the Commission grant this Appeal for Relief and/or Request for Review and Waiver and remand the case to USAC for further consideration.

All further contact should be directed to Kimberly Friends at kfriends@csmcentral.com.

Attach: PUSD Multi Year ATC